TFW 1764

AGILENT TECHNOLOGIES, INC.
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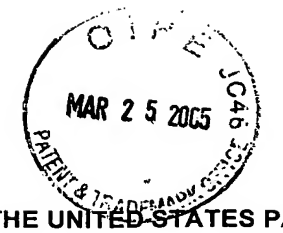

ATTORNEY DOCKET NO. 10010409-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Bill J. Peck

Serial No.: 10/035,788 **Examiner:** 1764

Filing Date: December 24, 2001 **Group Art Unit:** Jennifer A. Leung

Title: Atmospheric Control in Reaction Chambers

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria VA 22313-1450

TRANSMITTAL LETTER FOR RESPONSE/AMENDMENT

Sir:

Transmitted herewith is/are the following in the above-identified application:

- [x] Response/Amendment
- [ ] Petition to extend time to respond
- [ ] New fee as calculated below
- [ ] Supplemental Declaration
- [x] No additional fee (Address envelope to "Mail Stop Amendments")
- [ ] Other: (Fee $_____)

CLAIMS AS AMENDED BY OTHER THAN A SMALL ENTITY						
(1) FOR	(2) CLAIMS REMAINING AFTER AMENDMENT	(3) NUMBER EXTRA	(4) HIGHEST NUMBER PREVIOUSLY PAID FOR	(5) PRESENT EXTRA	(6) RATE	(7) ADDITIONAL FEES
TOTAL CLAIMS		MINUS		= 0	X 50	$ 0
INDEP. CLAIMS		MINUS		= 0	X 200	$ 0
☐ FIRST PRESENTATION OF A MULTIPLE DEPENDENT CLAIM					+ 360	$ 0
EXTENSION FEE	1ST MONTH 120.00 ☐	2ND MONTH 450.00 ☐	3RD MONTH 1020.00 ☐	4TH MONTH 1590.00 ☐		$ 0
					OTHER FEES	$ 0
					TOTAL ADDITIONAL FEE FOR THIS AMENDMENT	$ 0

Charge $0 to Deposit Account **50-1078**. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-1078** pursuant to 37 CFR 1.2 5. Additionally please charge any fees to Deposit Account **50-1078** under 37 CFR 1.16, 1.17, 1.19, 1.20 and 1.21. A duplicate copy of this transmittal letter is enclosed.

Respectfully submitted,
Bill J. Peck
By Theodore J. Leitereg
Theodore J. Leitereg
Attorney/Agent for Applicant(s)

Reg. No. 28,319

Date: March 22, 2005

Telephone No. 650-485-5999

I hereby certify that this correspondence is being Deposited with the United States Postal Service as First class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

Date of Deposit: March 22, 2005

Typed Name: Theodore J. Leitereg

Signature: Theodore J. Leitereg

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450, on March 22, 2005.

Signature Theodore J. Leitereg **Date** 3/22/05

Name: Theodore J. Leitereg

PATENTS

Attorney Docket No. 10010409-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Bill J. Peck

Serial No. 10/035,788 Group Art Unit: 1764

Filed: December 24, 2001 Examiner: Jennifer A. Leung

Title: Atmospheric Control in Reaction Chambers

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Response to Restriction Requirement

This paper is responsive to the Restriction Requirement in the Office Action dated March 3, 2005, from the U.S. Patent and Trademark Office in the above-identified patent application.

Restriction was required under 35 U.S.C. §121 to one of the following inventions:

Group I – Claims 1-21, drawn to an apparatus for manufacturing an array of biopolymers on a support, classified in class 422, subclass 131.

Group II – Claims 22-39, drawn to a method for synthesizing an array of biopolymers on a support, classified in class 536, subclass 25.3, and class 530, subclass 334.

As required by the Restriction Requirement, Applicant elects the invention of Group I, Claims 1-21, drawn to an apparatus for manufacturing an array of biopolymers on a support.

In the Restriction Requirement, a determination was made that the inventions of Groups I and II are distinct each from the other. According to M.P.E.P. 802.01 the term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE

(novel and unobvious) OVER EACH OTHER (emphasis in original). Accordingly, in making the restriction requirement, the Office Action is acknowledging at least implicitly that the inventions of the aforementioned groups are separately patentable, i.e., novel and unobvious, over one other. If this were not the case, then the restriction requirement would not be proper.

Furthermore, it follows from the above that art (if such art exists) indicating that the invention of one of the groups is known or would have been obvious would not extend to a holding that the invention of the other group is known or would have been obvious. For example, art that might anticipate or render obvious a method as set forth in Claim 22, which is directed to synthesizing an array of biopolymers on a support that involves introducing a support into a reaction chamber wherein the reaction chamber has a positive and substantially uniform flow of gas therethrough and gas exits the reaction chamber through a gas outlet in a direction that is the same as the substantially uniform flow, would not render known or obvious the apparatus of Claim 1 or vice versa. Again, if this were not the case, then the restriction requirement would not be proper.

Requirement for Election of Species

If the invention of Group II was elected, the Office Action required under 35 U.S.C. §121 an election of a single disclosed species for prosecution on the merits to which the claims would be restricted if no generic claim was finally held to be allowable. Claim 22 was indicated in the Office Action to be generic.

Since Applicant has elected the invention of Group I, the requirement for election of species is moot. However, the lack of necessity for a response on the part of Applicant should not be construed as acquiescence in the position of the Office Action regarding the rationale for the election of species.

Respectfully submitted,

Theodore J. Leitereg

Theodore J. Leitereg
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Reg. No. 28,319

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